

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

The court held a hearing on August 17, 2012, on Plaintiffs' Motion for Sanctions and for an Order Compelling Disclosure and Discovery (Dkt. #149) and Defendants Robert L. Koppel's and Steve W. Koppel's (together, "the Koppel Defendants") Motion for Additional Time to Respond to Discovery and that Request for Admissions Not Be Deemed Admitted (Dkt. #155). Wesley Smith appeared on behalf of Plaintiffs. The Koppel Defendants, who reside out-of-state and are not represented by counsel, did not appear. The court has considered the Motions, the Koppel Defendants' Opposition (Dkt. #154), and Plaintiffs' Reply (Dkt. #156), and the arguments of counsel made at the hearing.

Plaintiff's Motion seeks sanctions against the Koppel Defendants for their failure to comply with discovery obligations, comply with court orders, and participate in this case. On December 7, 2011, District Judge Jones entered an Order (Dkt. #129) directing the Koppel Defendants, among others, to file an amended answer signed by the parties or the parties' counsel within ten days, but none of the Defendants have complied.

Additionally, Plaintiffs assert the Koppel Defendants have failed to participate in discovery. For example, on August 8, 2011, Plaintiffs mailed a Notice of Case Conference to the Koppel Defendants, setting a Rule 26(f) conference for September 8, 2011. Plaintiffs emailed call-in information for the conference so out-of-state participants could participate telephonically. The Koppel Defendants failed

1 to participate and took no part in drafting the proposed discovery plan and scheduling order.
2 Furthermore, they have not provided Plaintiffs with initial disclosures required under Rule 26(a)(1) of
3 the Federal Rules of Civil Procedure. In response to written discovery requests, the Koppel Defendants
4 gave boilerplate responses, stating they had no personal contact with Plaintiffs, have only acted as
5 passive stockholders and officers of the corporate entities named in the Complaint (Dkt. #1), and
6 requesting Plaintiffs dismiss them from this lawsuit. Finally, on March 5, 2012, Robert Koppel
7 informed Plaintiffs' counsel that he would not appear for his noticed deposition in Las Vegas, Nevada,
8 due to a medical condition. Robert Koppel did not appear for the March 26, 2012, deposition.

9 In their Opposition, filed after Plaintiffs' Reply, the Koppel Defendants state that on April 21,
10 2012, Robert Koppel sent Plaintiffs' counsel an email, stating the Koppel Defendants' intent to comply
11 with Plaintiffs' written discovery requests and requesting thirty days to do so. Plaintiffs' counsel
12 agreed. Additionally, Robert Koppel attached his signed Answer to Plaintiffs' Amended Complaint to
13 the Opposition. Steven Koppel did not attach a signed Answer to the Opposition.

14 At the August 17, 2012, hearing, Plaintiffs' counsel represented that the Koppel Defendants
15 agreed to appear at their depositions, currently noticed for August 30, 2012, to be taken in Northern
16 California, where the Koppel Defendants reside. Because there is currently a Motion for Leave to File
17 Second Amended Complaint (Dkt. #163) pending before the district judge, however, those deposition
18 may be rescheduled so that they need not be taken twice if the Motion to Amend is granted.
19 Additionally, the Koppel Defendants have now responded to Plaintiffs' written discovery requests, and
20 Plaintiffs' counsel did not claim that those responses were inadequate.

21 The court appreciates that it is difficult for parties appearing pro se (representing themselves) to
22 defend a federal lawsuit. However, all parties are required to participate and cooperate in the discovery
23 process. Although the Koppel Defendants have not fully complied with their obligations, they are now
24 attempting to cooperate and participate in this litigation. They have responded to Plaintiffs' written
25 discovery requests, and Robert Koppel has now filed a signed answer. The court finds that sanctions
26 are not warranted at this time. However, the Koppel Defendants are warned that they must comply with
27 their discovery obligations. Sanctions, up to and including case-dispositive sanctions may be imposed
28 if the Koppel Defendants refuse to comply with these obligations.

1 Accordingly,

2 **IT IS ORDERED:**

3 1. Plaintiffs' Motion for Sanctions (Dkt. #149) is DENIED WITHOUT PREJUDICE as to
4 the Koppel Defendants.

5 2. The Koppel Defendants' Motion to Extend Time (Dkt. #155) is GRANTED.

6 3. The Clerk of Court shall separately file pp.5-21 of the Koppel Defendants' Motion to
7 Extend Time as Defendant Robert Koppel's Answer to Plaintiffs' Amended Complaint.

8 4. Defendant Steven Koppel shall file a signed Answer to Plaintiffs' Amended Complaint
9 on or before **September 4, 2012**.

10 Dated this 21st day of August, 2012.

11
12
13 
14 PEGGY A. LEEN
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28